

REMARKS

Entry of the foregoing amendments and reconsideration and withdrawal of the final rejection are respectfully requested in view of the following remarks.

Concerning initially the objection to the drawings which were filed on January 24, 2005, the Examiner has objected to the cross hatching for elements 12 and 20 in Fig. 1, 112 and 120 in Fig. 4, 212 and 220 in Fig. 7, and 312 and 320 in Fig. 10 as constituting new matter on the basis that these portions of the invention are now illustrated in a manner that is different from that originally filed. Applicant respectfully disagrees. In particular, the lining for elements 12 and 20 in Fig. 1 is not cross-hatching, but is simply to show one type of candle wick braiding and the same is shown in the original Fig. 1. The same is true of Fig. 4, Fig. 7, and Fig. 10 as originally filed. If, after reviewing the drawings, the Examiner is still of the opinion that the new drawings constitute new matter, he is cordially requested to telephone Applicant's attorney to discuss and hopefully resolve this issue.

Turning now to the 102/103 rejection of the claims. At the outset, Applicant submits herewith a 132 Declaration of the inventor, Bruce Campbell, who attests to the state of the prior art and the advance in the state of the art as accomplished by the present invention. The Declaration substantiates the fact that the problem with candle wick identification has been a ongoing problem in the industry which no one until the present invention has been able to solve. Specifically, the Declaration provides support for the arguments of counsel referred to in the Office Action on pages 2 and 3 of the

Office Action. Furthermore, the Declaration attest to the commercial success of the product with over 25 million wick clip assemblies embodying a wick having a colored filament having been sold in the past year by Applicant's company.

As previously argued, Applicant's invention is limited to a candle wick having a colored identification filament. The Examiner has indicated that the claimed preamble defining a candle wick has not been given patentable weight because the recitation occurs in the preamble. The Examiner states that "a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure and where the body of the claimed does not depend on the preamble for completeness, but instead, the process steps or structural limitations are able to stand alone." However, no "litmus test" exists as to what effect should be accorded to words contained in a preamble. Review of a patent in its entirety should be made to determine whether the inventors intended such language to represent an additional structural limitation or mere introductory language. *Corning Glass Works v. Sumitomo Electric U.S.A.*, 868 F. 2d 1251, 1257 (Fed. Cir. 1989). "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or if the claim preamble is "necessary to give life, meaning and vitality" to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F. 3d 1298, 1305 (Fed. Cir. 1999); see *In re Paulsen*, 30 F. 3d 1475, 1478-79 (Fed. Cir. 1994)(holding that in review the patent the term "computer" in the preamble is one that "breathes life and meaning into the claims and, hence is a necessary limitation to them"). "A term appearing in the preamble is limiting when...it is found to be required to confer meaning on the claim." *Phillips*

Petroleum Co. v. Huntsman Polymers Corp., 157 F. 3d 866, 872 (Fed. Cir. 1998). Furthermore, if the "preamble is necessary to provide antecedent basis for subsequent language in the claim [then it] is significant in determining that the preamble is a claim limitation." *Stranco Inc. v. Atlantes Chemical Systems Inc.*, 15 U.S.P.Q. 2d 1704, 1713 (S.D. Tex 1990). "Where a patentee uses the claim preamble to recite structural limitations of his claimed invention, the PTO and courts give effect to that usage." *Rowe v. Dror*, 112 F. 3d 473, 478 (Fed. Cir. 1997).

In this case, to read the claim in light of the specification to cover the cited prior art would be divorced from reality. The invention is restricted to candle wicks as defined in the specification. The claim preamble here provides antecedent basis for subsequent language in the claims and gives life and meaning and provides further positive limitations to the invention claimed.

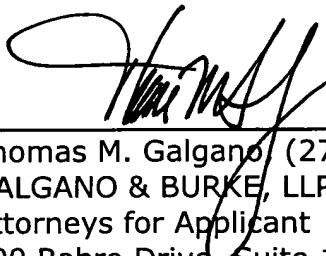
In particular, it is clear that the Applicant is claiming a candle wick not a telephone cable or a dog chew toy. Claim 1 now recites a candle wick having a candle wick body comprising combustible materials suitable for use as a candle wick. Neither a telephone cable nor a dog chew toy would be suitable for this purpose and obviously could not constitute a candle wick body or a method of making the same as presently claimed.

Finally, Applicant hereby requests a two month extension of time in which to respond to the outstanding Office Action. Credit Card payment form no. PTO-2038 in the amount of four hundred and fifty dollars (\$450.00) is enclosed. Any fee deficiency or overpayment may be charged or credited to applicant's Deposit Account No. 07-0130.

In view of the foregoing, entry of the foregoing amendment and reconsideration and withdrawal of the final rejection at an early date is earnestly solicited.

Respectfully submitted,

BRUCE CAMPBELL

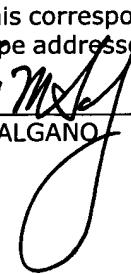


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Enclosure: USPTO Form 2038 in the amount of \$450.00
Declaration of Bruce Campbell
Postcard
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on October 11, 2005

By:  Date: October 11, 2005
THOMAS M. GALGANO



PATENT
DOCKET NO.: 1440-9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : BRUCE CAMPBELL
SERIAL NO. : 10/699,946
FILED : NOVEMBER 3, 2003
TITLE : COLOR CODED CANDLE WICKS AND METHODS OF
MANUFACTURING SAME
ART UNIT NO. : 3749
EXAMINER : CARL D. PRICE

DECLARATION OF BRUCE CAMPBELL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, BRUCE CAMPBELL, hereby declare that:

1. I am the Applicant identified in the above-identified application and I submit this Declaration is support of said application.

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2. I have been working in the candle industry for approximately the last ten (10) years. My research has focused on candle wicks for the past eight (8) years.
3. I am currently employed by Edwin B. Stimson Company, Inc., the Assignee of the above-identified application as Manager of New Product Development, which position I have held for the past six (6) years. One of my responsibilities is to test burn candles and optimize their combustion through careful wick selection. I also work with wick manufacturers in inventing new and different wicks which are needed in the candle industry as new waxes are developed. In fact, I have been sent pieces of wicks from candle manufacturers from all over the world who have asked for my assistance in identifying different types of wicks which they are unable to do. Up to now, this has been more of an art than a science.
4. As a result of my expertise in the candle wick field, I have been asked to speak on this subject at several candle industry association meetings. As an example, in 2001, I gave a speech at the National Candle Association technical meeting on candle combustion. In 2002, I was requested to speak at the Mexico City World Trade Center by a leading wax company to speak on candle wicks construction and technologies. Later, this

month on October 25, 2005, I will speak at the National Candle Association Meeting in Washington on candle combustion and wicks. I have also been requested to speak at the World Candle Congress in Cancun, Mexico on candle combustion and wicks for their annual meeting in 2007.

5. I have also served on the ASTM Committee to create standards for lead content in candle wicks in 2002 and 2003, which standards became law in 2004. In 2005, I also served on the ASTM Committee working in cooperation with the Consumer Protection Safety Council (CPSC) on external temperature safety for jar or container candles.

6. I have designed, built, and patented state-of-the-art machinery to wax, cut, and tab candle wicks (see U.S. Patent Nos. 6,341,409, 6,532,649, 6,481,997, and 6,851,294 and pending application serial no. 10/699,946).

7. Candle wick identification is a universal industry problem that has existed in the industry for many years. According to a study by the National Firemen's Association, errors in the area of candle making often occur and when that happens the wrong wick may end up in the candle, which would either die out or burn to hot. When the latter happens in a consumer's household, the result could run from excess soot to worse case, fire and death.
8. There have in fact been numerous instances of the wrong wick being inserted into candle production. Many of the documented candle re-calls by the CPSC were from oversized wicks in the wrong candle. In June of 2005 alone, I worked with a company that had two different candles recalled due to wrong wick sizes being manufactured into the candles.
9. As noted in my application, in commercial production, candle wicks are sold on a spool containing hundreds of yards of wick material. The wick itself is usually white with no markings on it. Candlewick identification is and has been a critical problem for the candle industry. In raw wick form, all the wicks resemble rolls of string. The differentiation between sizes can be as minute as a few more or less threads of cotton. When the wick is waxed and processed the wax coating obscures all detail and eliminates the chance of identification.

10. Up to now, the candle industry relies on trust and inventory control to insure that the wick is manufactured, labeled, distributed, and processed without losing track of its size. Of course, in real life, this process breaks down often and errors are made. The characteristics of the wick are printed on a label affixed to the spool. Unfortunately, it is possible that a spool of candle wick material is mislabeled. This can have disastrous results. If the wrong wick is used in a candle, it can create not merely an aesthetic issue, but a safety issue as well.
11. Up to now, because of the many thousands of different wick types and the many different manufacturers, it is impossible to identify a wick accurately by visual examination, even with the aide of a magnifying device. One must rely on the label.
12. Despite the fact that candles have been known for thousands of years and that prior attempts to identify wicks have been made (but failed - see page 4, paragraph 3 of the application), no one has solved this problem until now.
13. At the heart of my invention is a system to color code candle wicks so that they can be easily identified by type, properties, or other candle characteristics (burn time, etc.) before, during, and after candle production.

14. As pointed out in the application, the use of a wrong candle wick for a particular type of candle can create not only an aesthetic but also a safety issue as well. The wrong wick can cause a candle to become a dangerous article of combustion which results in dangerous, and sometimes fatal fires.
15. The present invention overcomes this problem by providing a candle wick have a candle wick body comprising an outer surface being substantially monochromatic and an inner region including at least one colored identification filament which is not visible to the outer surface of the candle wick and which is colored coded to identify at least one candle wick characteristic, e.g., wick type, yield, rate of combustion, manufacturer, etc. The candle wicks according to the invention are coded at the time of manufacture and therefore maintain the proper coding throughout their chain of custody from the manufacturer to the consumer. The wick identification can be read at any time, even after the candle is consumed. Thus, fire investigations are assisted and product liability evidence is preserved in the case of improperly manufactured candles.
16. The secondary references cited in the Office Action - namely Weston and O'Rourke relate to non-analogous art. Weston referring to a 1932 patent

disclosing a telephone cable and O'Rourke disclosing a 1998 patent for a chew toy for dogs. Neither of these patents relate to the identification of candle wick characteristics. Moreover, one in the field of designing candle wicks would not look to either telephone cables or a dog chew toy for inspiration. Indeed, in view of the fact that the candle wick art has been around for thousand of years and this telephone cable art as represented by Weston has been around for over seventy (70) years, it is evident that no one in the candle industry has thought to combine their teachings in the manner proposed in the Office Action.

17. The present invention represents a significant advance in the state of the art. The invention as defined in the above-identified application helps produce a safer candle and it has been clearly embraced by the candle industry as an important way of accomplishing that goal. In fact, my company has manufactured and sold over 25 million wick clip assemblies embodying the present invention since the invention was introduced last year. From feedback from our customers, it is evident that they are thrilled with the product especially since they have had no problems in ensuring that the appropriate wick is used in the manufacturing process. It also significantly improves quality control before the finished product is shipped due to the ease of identification as a result of the use of the colored filament. The use of colored thread in the claimed manner absolutely and easily identifies the wick and its burning properties.

I further declare that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Date: October 11, 2005

Bruce Campbell
BRUCE CAMPBELL

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